C.S. 10 of

(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 1837 / 2004

PETITIONER :

Vishwaranjan Mukherjee
S/o Pramothonath Mukherjee
Aged about 84 years
R/o Tikrapara Colony Raipur,
Dist : Raipur-(C.G.)

R. R. No. 1832/04
Presented by Shri Vijay Sharma
dated 30-6-04

VERSUS

RESPONDENT :

Smt.Tara Devi Prajapati
W/o Shri Champalal Prajapati
Infront of Sai Baba Hospital New Shanti
Nagar, Raipur,
Tahsil & Dist : Raipur-(C.G.)

WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

XI-HC-22

(90)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.NO.1837/2004 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

29/07/2004

Shri Gautam Bhaduri, counsel for the petitioner.

The petitioner has filed this writ petition under Article 226/227 of the Constitution of India, being aggrieved by the order dated 17/04/2004 passed by Vth Civil Judge, Class –I, Raipur, on an application moved by the petitioner under Section 151 of the Code of Civil Procedure in M.J.C.No.41/2002, whereby the petitioner requested that the respondent herein be restrained from prohibitory injunction that she should not raise any construction on the disputed land.

Brief facts leading to filing of this petition are that the petitioner moved a Civil Suit No.126-A/99 in the Court of Civil Judge for declaration and permanent injunction with respect to the land bearing Khasra No.569, admeasuring 4204 sq.feet situated at Pandri Taria, Raipur., on the ground that he purchased the said land through the registered sale deed in the year 1996. During the pendency of the Suit the defendants No. 4 and 5 in original suit died and no relief was claimed against them. The suit was pending trial for evidence. However, the petitioner suffered a major heart attack, therefore, the civil suit was dismissed in default.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 1837/2004 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित (2)	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

However, later on the petitioner became a little bit stable in his health and moved an application for restoration of the civil suit under Order 9 Rule 9 of the Code of the Civil Procedure. But, in the meantime, the defendants sold the disputed land to a third party and one amongst those is the respondent herein. Therefore, the petitioner moved an application for restraining the respondent herein from carrying out the construction.

In para 6 of the order, the learned Civil Judge has mentioned that it is not clear that the land which was purchased by Tara Devi is a disputed land and the construction is being raised on the disputed land and no affidavit has been filed on behalf of any neighbourer or any other person indicating that the construction is taking place on the disputed land, therefore, no injunction can be granted.

I have heard learned counsel for the petitioner.

It is an admitted position that the suit which was filed by the petitioner was dismissed and application for restoration has been moved and the suit has not been restored and even so far, Tara Devi is not a party in that suit and as has been observed by the

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विरुद्ध

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learned Civil Judge that it is not clear that Tara Devi is raising construction on the disputed land.

Therefore, in the above circumstances, I am of the opinion that by rejecting the application of the petitioner, the learned trial Court has not committed any illegality or passed any order without jurisdiction. Therefore, I do not find any justification to invoke the jurisdiction under Article 226/227 of the Constitution of India for setting aside the impugned order. Accordingly, the petition is liable to be dismissed and is dismissed.

In view of this order, M.W.P.No.1640/2004 and I.A.No.4341/2004 stand disposed of.

Sd/-
L.C.BHADOO
Judge

Rajni
Sunita

[पीछे देखिये